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Supreme Court, U.S.
FILED
SEP 26 1995
CLERK

No. 95-148

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

SEABURY MANAGEMENT, INC.,
Petitioner,

v.

PROFESSIONAL GOLFERS' ASSOCIATION OF AMERICA, INC.,
MIDDLE ATLANTIC SECTION OF PROFESSIONAL GOLFERS' ASSOCIATION OF AMERICA, INC.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITIONER'S REPLY BRIEF

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Dated: September 26, 1995

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

4 pp

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PETITIONER'S REPLY BRIEF

Petitioner Seabury Management, Inc. ("Seabury") files this short reply to the Opposition Brief filed by Respondents Professional Golfers' Association of America ("PGA") and its separately incorporated and financially independent Middle Atlantic Section ("MAPGA").

1. An antitrust exemption has been afforded only to professional baseball. *See Federal Baseball Club of Baltimore v. National League*, 259 U.S. 200 (1922); *and see*

Flood v. Kuhn, 407 U.S. 258 (1972). Other professional sporting leagues and associations have argued for exempt status on the "single entity" theory announced by this Court in *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984)—all to no avail. *See, e.g., NCAA v. Board of Regents, Oklahoma University*, 468 U.S. 85, 98-99 (1984); *Los Angeles Memorial Coliseum Commission v. NFL*, 726 F.2d 1381, 1387-90 (9th Cir.), *cert. denied*, 469 U.S. 990 (1984); *North American Soccer League v. NFL*, 670 F.2d 1249, 1255-57 (2d Cir. 1982), *cert. denied*, 459 U.S. 1074 (1982). Contrary to this unbroken line of precedent, the Fourth Circuit Court of Appeals for the first time extends *Copperweld* to the PGA and its separately incorporated member sections to insulate the Professional Golfers' Association of America from antitrust scrutiny. *See* Seabury Petition at pp. 6a-7a. This departure from settled precedent warrants plenary review by this Court.

2. The decision below is wrong on its own reasoning. The touchstone of antitrust exemption under this Court's decision in *Copperweld* is whether an organization and its related entities are so closely intertwined as to necessarily operate as a single economic enterprise. The Fourth Circuit accepted the district court's conclusion that the Professional Golfers' Association of America and the PGA section organizations—although separate corporations and commercially and financially independent of one another (Seabury Petition, at p. 27a)—were not separate economic entities. *Id.* at 6a. Yet, the court below also accepted the district court's finding that golf trade shows "operated by individual sections . . . compete with each other for the attention of buyers." *Id.* at 8a. If a subsidiary competes in the same commercial market with its parent, not to mention with other affiliated subsidiaries, these organizations cannot, under *Copperweld*, be considered a single economic entity and thus "incapable of conspiring" under the antitrust laws. *Copperweld Corp. v. Independent Tube Corp., supra*, 467 U.S. at

772. This conclusion is compelled no less for the PGA and its member sections than for the NCAA and its member schools, the NFL and its member teams, or the NASL and its member teams. Once the competitive relationship of the member entities is established—unlike a parent/wholly-owned subsidiary relationship—antitrust oversight is unavoidable. *See, e.g., Los Angeles Memorial Coliseum Commission v. NFL, supra,* 726 F.2d at 1387-90.

The decision below is as far reaching as it is erroneous. It permits competing, though related, organizations to conspire among themselves, whether through price fixing agreements, joint refusals to deal, or market sharing mechanisms. The decision thus contradicts prior precedents of this Court and other federal appellate courts and should therefore be reviewed.

Respectfully submitted,

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